Report Under Section 12
of the Auditor General Act

Ministry of Attorney General: A Review of the Ministry's Relationship with Syscom Consulting Inc.

PROVINCE OF
BRITISH COLUMBIA

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The Honourable C. Stephen Rogers
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Sir:

I submit to you this report entitled, Ministry of Attorney General: A Review of the Ministry's Relationship with Syscom Consulting Inc.

This report is issued in accordance with section 12 of the Auditor General Act, RSBC 1979.

George L. Morfitt, F.C.A.
Auditor General

Victoria, British Columbia
November 23, 1990

Ministry of Attorney General:

A Review of the Ministry's Relationship with Syscom Consulting Inc.

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Ministry of Attorney General:

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Introduction

Over recent weeks, allegations of impropriety have aroused public interest in the relationship between the Ministry of Attorney General and Syscom Consulting Inc. (Syscom), a supplier of computer services to the Ministry.

Upon considering those allegations, I decided my Office should examine this matter and that I should report the examination findings to the Speaker of the Legislative Assembly under authority of section 12 of the *Auditor General Act*. That section allows me to make a report to " . . . any public officer on any matter that in the opinion of the Auditor General should be brought to his . . . attention." I have chosen this method of reporting my findings in preference to making a special report to the Legislative Assembly under section 11 of the *Auditor General Act*. Reporting under that section requires a matter to be of primary importance or urgency warranting a report which, in my opinion, should not be deferred until I make my annual report to the Assembly. I do not believe the subject matter of this report to be in that category.

In reviewing the relationship between the Ministry of Attorney General and Syscom, my Office endeavored to ascertain whether the principals of Syscom had been in a conflict of interest situation and whether they had influenced the process followed by the Ministry for privatizing the operations function of its Systems Services Division. We also wanted to ascertain whether the Ministry's relationship with Syscom had resulted in the Ministry incurring unnecessary or excessive costs.

Scope of Review

We reviewed the Ministry's computer services contracting activities for the period from July 1988 to August 1990. Although Syscom was only established as a corporate entity in September 1989, we extended our review back to 1988 because the principals of Syscom, Mr. Philip Pimlott and Mr. John Roberts, and some of Syscom's sub-contractors had contracted their services directly with the Ministry during all or part of that earlier period.

Overall Conclusions

We believe that, during the period in which Messrs. Pimlott and Roberts were concurrently principals of Syscom and

performing in managerial roles in the Ministry's Systems Services Division, they were in a conflict of interest situation. Such a situation has the potential to result, or to appear to result, in an improper personal gain or advantage, or in an interference with the objective performance of duties. We believe it would have been prudent for the Ministry to take corrective action to deal with the conflict of interest situation, which it did not do.

Nevertheless, we found no evidence to suggest that the principals of Syscom had any direct involvement in the Ministry's decision to privatize the operations function of its Systems Services Division, or in the design and issue of the related contract tendering documents.

It is unclear if any unnecessary or excessive costs to the Ministry resulted from its relationship with Syscom. When awarding contracts to Syscom or, indeed, to any personal service contractors in its Systems Services Division, the Ministry did not follow established government policies and guidelines. These policies and guidelines, which deal with the acquisition, management and evaluation of contracts, are designed to ensure the government receives the best value for the money spent on contracts. In the absence of compliance with these policies and guidelines, it is not possible, after the event, to assess accurately whether any contract provided best value. This is because the conditions in existence at the time of the contract award, such as the market value of the expertise required and the availability of qualified individuals, cannot be recreated with a reasonable degree of accuracy.

Methodology

We interviewed appropriate senior management of the Ministry of Attorney General, the Director of the Ministry's Systems Services Division, and a selection of individuals working in the Division, including Ministry employees, personal service contractors, Syscom sub-contractors, and British Columbia Systems Corporation employees on secondment to the Ministry. We also interviewed the principals of Syscom, and of two other companies currently providing contract services to the Systems Services Division.

As well, we met with a representative of the management consulting firm involved in the privatization process for Systems Services, and with representatives from the central government agencies of Treasury Board Staff, the Office of Information Technology (OIT), and the Purchasing Commission.

Contracts and other supporting documentation were also examined.

Background

In July 1988, the Ministry of Solicitor General was established, and was assigned a number of responsibilities formerly handled by the Ministry of Attorney General. At the same time, the Systems Services Division of the Ministry of Attorney General, previously responsible for providing information services to the Court Services Branch only, assumed that responsibility for the whole Ministry. In addition to the 9.75 fulltime equivalent (FTE) positions already allocated

to the Division, another FTE was apparently transferred to it as well, though the position was not filled. The Manager position, later to be upgraded to a Director position, was filled by the present incumbent, Mr. Eugene Spencer. It was (and still is) the only management exclusion position in the Division.

In the last couple of years, the work of the Systems Services Division has expanded due to the Division's additional responsibilities across the Ministry, and the implementation of the Justice Reform Commission recommendations, including automation of many areas of the justice system. Also, because of problems in 1989 over the introduction of an amendment to the Motor Vehicle Act concerning fines, the Systems Services Division became involved in collecting fines, which required additional data entry resources.

Mr. Spencer informed us that the required expansion was handled by using personal service contractors, because of a shortage of FTEs in the Systems Services area. He then found himself, he told us, in the position of having to monitor about 20 separate contracts.

Early in 1989, recognizing the need for a strategic plan for Systems Services, the then Assistant Deputy Minister of Management Services and Justice Support Programs formed an Executive Committee on Information Technology (EXCIT). The committee, which was composed exclusively of Ministry employees, had a mandate to determine the Ministry's strategic direction for information technology and systems. It contracted the management consulting firm of Touche Ross (now Deloitte & Touche) to assist with strategic planning for information technology. Early work of the committee included deliberations on how best to structure the Systems Services Division, and whether or not to privatize some or all of its work.

In April 1989, the Ministry asked the management consulting firm of Woods Gordon (now Ernst & Young) to review the various service delivery areas of the Systems Services Division. The Ministry also asked the consultants to recommend which functions should be performed on contract and how these could be most appropriately packaged for issuing a Request for Proposal (RFP) for contracting purposes.

Among the concerns raised in Ernst & Young's report were:

- Because project management responsibilities were being performed largely by the private sector, the Ministry was in a vulnerable position in that no Ministry staff in the Systems Services Division, with the exception of the Director (Mr. Spencer), understood the detailed business operations of the branches of the Ministry.

- The Ministry did not have the senior staff available to manage the information systems process in terms of planning, data base administration, communications and quality assurance.

- Although the Division was already largely privatized, the number of contracts being administered was cumbersome.

The consultants' report contained a number of recommendations, including:

- that the Ministry hire Project Managers to assume responsibility for the various Branch operations;

- that the Ministry create a number of senior management positions and fill them with existing staff or new employees, to provide the systems support necessary to manage such a large, complex operation; and

- that the Ministry consolidate the number of personal service contracts into larger contracts with established firms (or possibly new firms which might be created). The consultants envisaged that the existing Ministry staff (systems analysts and data processing operators) would become part of these larger organizations.

At a meeting in June 1989, the EXCIT concluded that the actual operating function of the Systems Services Division should be contracted out and that the management function should be handled by public servants. With a few modifications, the recommendations of the consultants were accepted by the EXCIT and formed the basis of the subsequent Request for Information (RFI) and RFP issued by the Ministry.

The consultants' report anticipated that the RFP process would have been completed and the resultant contracts in place by December 1, 1989. Because of the complex environment and scarce resources, however, the process has taken much longer. Furthermore, the Ministry has not pursued the hiring of staff to fill the positions suggested by the consultants, because agreement has not yet been reached with the British Columbia Government Employees' Union on a proposed change of certain positions to excluded status.

Syscom Consulting Inc.

Mr. Pimlott (through his company, Five Star Systems Ltd.) was contracted by the Ministry in 1988 in connection with a major systems development project. This contract was the result of an RFP. (Mr. Pimlott had previously worked at the Ministry as an employee of Computech Consulting Canada Ltd., which had been under contract to develop another major system.) When a senior business analyst working in the Systems Services Division left, Mr. Spencer assumed those responsibilities. It became apparent, though, that this was not a feasible arrangement, because of Mr. Spencer's workload. A Ministry employee was therefore phased into the development project and Mr. Pimlott was asked by Mr. Spencer to assume general responsibility for monitoring systems development within the Court Services Branch, on a contract basis. During the 1989 fiscal year, Five Star Systems Ltd. had two six-month contracts with the Ministry, for a total amount of $117,600.

According to Mr. Spencer, the individual responsible for providing technical support and for running the Division's Data Centre in Vancouver was becoming increasingly overworked during the early part of 1989. So, pending the privatization process about to get underway, Mr. Spencer decided to look for someone to manage the Vancouver Data

Centre. The position was not advertised. Rather, Mr. Spencer indicated his requirement to the industry by word of mouth. We were told that Mr. Roberts approached Mr. Spencer with the suggestion that he (Roberts) be contracted as the Data Centre Manager. Mr. Roberts was then employed by Datapoint Canada Inc. (Datapoint), the main supplier of the Ministry's hardware, and so was familiar with the Ministry's equipment and systems. Also, although at that time Mr. Roberts was on the sales side of Datapoint's business, he had previous experience in managing a computer operations centre. Mr. Spencer had dealt with Mr. Roberts through Datapoint and was aware of Mr. Roberts' ability to deliver good service on schedule. Mr. Spencer felt that Mr. Roberts was the best candidate, so a personal service contract was entered into by the Ministry and J. Roberts & Associates Inc., a company incorporated in August 1989. The contract was for a period of one year, at a total cost of $99,600, including expenses to a maximum of $3,600.

The likelihood of privatization of the Systems Services Division had apparently been general knowledge in the Ministry for some time, and we understand that Mr. Pimlott had earlier had discussions with some of the Ministry employees about putting together a bid at the appropriate time. No agreement had resulted, though. Syscom Consulting Inc. (Syscom) was incorporated on September 27, 1989, with the two principals being Messrs. Pimlott and Roberts. On September 15, 1989, Syscom presented to Mr. Spencer an unsolicited proposal to "perform facilities management services for the Court Services Branch" of the Ministry. This proposal was passed to the Assistant Deputy Minister, who responded with a note to Mr. Spencer indicating that it looked interesting and that Mr. Spencer should make sure Syscom got a copy of the RFP.

Messrs. Pimlott and Roberts then approached the Ministry with the suggestion that Syscom take over the personal service contracts then in effect. Their objective in doing this was evidently to put the existing personal service contractors, collectively, in a better position to bid on the pending RFP. According to Mr. Spencer, this offer was attractive to him because it meant he would then be dealing with only one contract in place of 12. Mr. Pimlott and/or Mr. Roberts then approached the personal service contractors individually to see if they were interested in joining Syscom. In December 1989, most of the interested contractors signed a letter to Mr. Spencer stating that "we are requesting that for the balance of our respective contracts (the period January 1, 1990 through March 31, 1990), we be contracted collectively through Syscom Consulting Inc." Two other contractors sent similar letters early in January 1990.

Effective January 1, 1990 (with the two exceptions coming in later that month) most of the existing personal service contracts were transferred to Syscom, and contract amendments were written. Although there was no change in the cost to the Ministry, now the service payments were made to Syscom rather than to the individual contractors. Messrs. Pimlott and Roberts told us that the company does not have any direct employees but, rather, a contractor/ sub-contractor relationship with the support personnel.

According to Mr. Spencer, expansion of the Systems Services Division's workload continued during 1989, making additional resources necessary. In particular, the amendment to the Motor Vehicle Act referred to earlier created an urgent need for computer operators and data entry staff. In the fall of 1989, the Ministry entered into four contracts with Syscom, for a total maximum amount of $244,000, covering the period up to March 31, 1990. These contracts were for technical support, operator and clerical services, data entry services, and office automation at Court Services headquarters. These contracts resulted in the addition of 14 people to the Systems Services Division.

The services provided by Syscom continued into the 1990/91 fiscal year and were covered by four separate fixed price contracts, with a total value of $1,608,000 for the year ending March 31, 1991. The contracts included a 30-day cancellation clause.

During 1990, one of the Syscom contractors, Mr. James Dickson, expressed interest in a permanent position with the Ministry. After discussions with Mr. Spencer, he was offered the position of Manager of Systems Development. Mr. Dickson remains on a personal service contract, however, because this position is one of those that the Ministry believes should have excluded status. Effective July 1, 1990, the contract with Syscom for Mr. Dickson's services was cancelled and the Ministry entered into a personal service contract with Mr. Dickson for the period July 9, 1990, to June 30, 1991. During Mr. Spencer's absence on vacation in August 1990, Mr. Dickson was the acting Director of Systems Services Division.

The RFP Process

The RFI and the RFP were handled by the consultants (Ernst & Young) and Mr. Spencer. The RFI was issued to determine the level of interest from the private sector in providing information systems support services to the Ministry. Considerable interest was shown, so an RFP was issued in July 1990. Mr. Spencer and the consultants changed the requirements somewhat: while the RFI envisioned as many as 33 separate contracts, the RFP reduced the potential contract areas to 6.

Before its distribution, the RFP was apparently reviewed by the Ministry's EXCIT, and by the Privatization Group, and the Purchasing Commission. In addition, the government employees in the Systems Services Division had an opportunity to make a formal bid as an employee group. After consideration, however, they declined to do so. Shortly after the RFP was issued, a bidders' meeting was held to answer questions from companies that had received the RFP.

The RFP closed on August 17, 1990, and the bids remain, at the date of writing this report, unopened at the Purchasing Commission. It is intended that the initial evaluation of the bids be undertaken by Ernst & Young. The Review Committee, consisting of three Ministry personnel (Mr. Spencer, the Assistant Deputy Minister of Court Services, and the Director of Operations, Criminal Justice) and

representatives from the Purchasing Commission and Deloitte & Touche, are to review Ernst & Young's evaluation and make recommendations to the EXCIT.

Findings

During the period since July 1988, when the Ministry of Solicitor General was separated from the Ministry of Attorney General, demands on the Systems Services Division have grown considerably. Prior to the ministry split, the Division was servicing the information needs of one part of the Ministry. Now it is servicing the whole Ministry of Attorney General, whose information needs have also increased. Senior Ministry management recognized that the structure of the Systems Services Division needed improvement, because the Division was reliant on a number of personal service contractors, and did not have the necessary management support. The Ministry sought the advice of consultants, and focused on strategic planning matters. The Ministry is in the process of formally tendering the Division's operations function through the RFP process, and of acquiring the necessary management infrastructure. This process, however, has taken the Ministry much longer than anticipated.

In the meantime, the Director of the Systems Services Division continued to be in the position of having to rely on contractors, without any management support. Once Syscom was incorporated in September 1989, it appears that its principals moved quickly to consolidate what they saw as a good business opportunity. By being in a position to offer personnel whenever there was a need, Syscom was apparently able to readily provide the service requirements of the Director of the Systems Services Division. Just over three months after its incorporation, Syscom had 26 people under contract to the Division, including its two principals in the senior positions of Manager of the Vancouver Data Centre, and Manager of Systems Development for Court Services.

Conflict of Interest Situation

We believe that, during the period in which the Syscom principals were also performing in managerial roles in the Ministry, they were in a conflict of interest situation. The Syscom principals were managing their own sub-contractors, other contractors, and Ministry personnel, while at the same time, they were seeking to strengthen the position of Syscom within the Ministry. The situation was exacerbated by the fact that the Director of Systems Services (Spencer) had no non-contract senior staff to assist him in overseeing the activities of contract personnel. We believe the Ministry should have taken action to address the conflict of interest situation. They could have given Messrs. Pimlott and Roberts the option of not seeking to contract personnel to the Ministry through Syscom and not bidding on the RFP or, alternatively, terminating their own contracts with the Ministry.

The RFP Process

Although the principals of Syscom were in a conflict of interest situation, we found no evidence to suggest that they had any direct involvement in the decision to privatize the operations of the Systems Services Division or in the design and issue of the RFI or RFP

documents. Both documents were based on the recommendations of the consultants and were written by them, in conjunction with Mr. Spencer. We understand that the consultants had no contact with the Syscom principals during the process. The RFP was reviewed before being issued by the Ministry's EXCIT and various central agency groups.

Ministry employees were given a draft of the RFP before it was issued to the public and had the opportunity to put together an employee bid. It does appear, though, that they were not given a copy of the final RFP. The draft RFP was given to them directly by Mr. Spencer and he had subsequent meetings with the group. During other stages of the process, employees were kept informed by Mr. Pimlott and Mr. Roberts as to what was happening. This was not desirable because of the conflict of interest situation. It seems, however, that acting in their managerial roles, the two were attempting to keep everybody informed. We found no evidence that any relevant information was withheld from the employees, although we believe, given the circumstances, Mr. Spencer could have taken a more active role in communicating with the employees, rather than relying on the contract managers to do so.

Awarding Contracts

We noted that the amounts paid to individual personal service contractors were generally higher than would have been the case if government employees were holding the positions. We understand that this situation is not unique, in that it also occurs elsewhere in government. The disparity occurs because there is usually a premium paid to the personal service contractors in lieu of benefits, such as the paid vacation and sick leave, that government employees receive.

Cost, however, is only one of the factors to be considered by managers in deciding whether to enter into a contract. The government's General Management Operating Policy manual (GMOP), Section 6, Contract Management, states that the management decision to let a contract is made by contrasting the contracting alternative to the use of in-house resources in terms of: which way is the least costly alternative; which way promises greater value for money; and which way provides the equipment, expertise, etc., to do the task. There are many variables that can affect management's decision with respect to a contract, such as the market value of the expertise required, the availability of qualified individuals within government and the private sector, and the FTE position within the ministry.

In our review of the government's privatization process, which was included in the 1989 Annual Report of the Auditor General to the Legislative Assembly, we commented that the best test of market value is through an open bidding process. And this is reflected in the GMOP policies and guidelines on the awarding of contracts. For personal service contracts having a cost of less than $100,000, the GMOP encourages ministries either to advertise in a manner that will ensure a reasonable number of qualified contractors have the opportunity to prepare and present bids, or to request tenders from a bidders' list. For contracts having a cost of

less than $50,000, ministries are encouraged to obtain a minimum of three written bids from potential qualified contractors. The GMOP also indicates that more than one person should be involved in selecting a contractor.

We found that the Ministry did not follow these guidelines for any of the Systems Services Division's personal service contracts entered into during the period we reviewed. While it was not mandatory for the Ministry to follow guidelines (as opposed to policies, which ministries must comply with), we believe that, in the circumstances, it would have been prudent for the Ministry to get competitive bids or quotes. Without having done this, it is difficult for the Ministry to demonstrate that it obtained best value. Neither is it possible for us, after the event, to form a fair assessment as to the reasonableness of the contracts, including the Syscom contracts. This is because the conditions with respect to the variables discussed above, existing at the time of the contract award, cannot be recreated with any degree of accuracy. In the absence of bids or quotes, we believe the Ministry should, at least, have had more than one management person involved in the awarding of personal service contracts.

As already explained, Mr. Spencer was the only non-contract Manager in Systems Services. As such, he had sole discretion over the awarding of contracts, subject only to the limit imposed by the approved annual budget for the Systems Services Division. Before Syscom's incorporation, it appears that positions were advertised by word of mouth, and that Mr. Spencer negotiated the amount of each contract with the potential contractor using his experience, his knowledge of the employment market, and his estimate of the value to the Ministry of the work to be done.

Syscom Contracts

When Mr. Spencer identified the need for additional resources in the fall of 1989, Syscom indicated that it could provide suitable personnel. The Ministry, however, did not prepare any documented support for the need for the additional positions, nor did it prepare a cost-benefit analysis of using contractors, because contracting was the only practical short-term solution considering the shortage of FTEs, according to Mr. Spencer. He also was reluctant, he said, to increase the number of individual contractors when the Ministry's long-term objective was to decrease the number. He indicated he was aware that, apart from Syscom, the contractor companies in the Ministry were in systems development rather than operations and, as the additional resources were needed in operations, Syscom was the only contractor on site interested and able to provide such resources at short notice.

The additional resources, which were provided by Syscom under the four contracts entered into during October and November 1989, were acquired by the company through a combination of previous contact, word of mouth and media advertising. Interviews with the potential sub-contractors were conducted by Mr. Roberts and, on some occasions, by the supervisor of computer operations, a Ministry employee. Mr. Roberts told us that it was always made clear to the candidates that they were being recruited by Syscom. However, one Syscom

sub-contractor we interviewed had been under the impression that she was to contract direct with the Ministry until, upon starting work, she was asked to sign a Syscom contract.

As with the earlier contracts described above, Mr. Spencer was the only Ministry employee involved in the negotiation and subsequent approval of the 1990/91 contracts with Syscom. Direct comparison of the 1990/91 contracts with the various contracts in existence in the previous year is difficult for a number of reasons. The new contracts are fixed price but some of the previous contracts were per diem. The 1990/91 contracts combine all the Syscom work into four large contracts but, in the previous year, there were about 15 different contracts covering the same work. And some of the sub-contractors have changed. According to correspondence from Syscom to the Ministry, the 1990/91 contracts were based on sub-contractor rates significantly higher than those in existence for the 1989/90 year. There were a number of other elements in the overall value of each contract, however, including anticipated overtime, expenses, administration costs (i.e., costs to Syscom for administering those contracts previously administered by the Ministry), and, we assume, profit for Syscom.

Other Issues

As well as containing policies and guidelines with respect to the awarding of contracts, the GMOP contains other policies relevant to the contracting activities of the Ministry's Systems Services Division. The policies establish that Treasury Board approval is required for contractors to hold organizational positions, and for any contract having a total annual value of over $100,000.

Contractors Holding Management Positions

The GMOP requires a Treasury Board review of those situations where a ministry wants or needs to place a contractor in a management position. The policy states that "contractors shall not occupy organizational positions, unless specifically approved by Treasury Board." The Ministry, however, did not seek such approval for any of the contractors holding management positions in the Systems Services Division. We believe that the Ministry should have sought Treasury Board approval for Mr. Pimlott to be contracted as Manager of Systems Development in the Court Services Branch, and for Mr. Roberts to be contracted as the Manager of the Data Centre in Vancouver. Neither Mr. Roberts nor Mr. Pimlott had any spending authority, but they were responsible for supervising both contract staff and Ministry employees. Also, we believe that the Ministry should have sought Treasury Board approval for Mr. Dickson, when he was contracted as the Manager of Systems Development. Mr. Dickson had similar supervisory responsibilities to Messrs. Pimlott and Roberts in addition to which he had, and exercised, spending authority.

Contracts over $100,000

The GMOP states that Treasury Board approval is required for any fixed price service contract with a cost in excess of $100,000 over a 12-month period. Treasury Board approval can be requested either by a

pre-approval request through the budget process prior to the beginning of the fiscal year, or at any time during the year by a Treasury Board submission.

We found that there was some confusion among the Ministry, Treasury Board Staff and OIT about what had actually been approved in this case. As part of the pre-approval process for the 1990/91 fiscal year, the Ministry requested approval for eight contracts for the Systems Services Division, including the services to be provided by Syscom. The form submitted by the Ministry indicated that 1990/91 would be the first time the services were to be contracted and that all the contracts were being tendered, rather than directly awarded. This was not actually the case. The work had been done for at least part of the previous fiscal year under various personal service contracts, although the packaging of the Syscom contracts was new. Also, it was not the Ministry's intention to tender the eight contracts listed, although all the work covered by the contracts was eventually to be tendered through the RFP process.

The Secretary of Treasury Board told the Ministry on March 29, 1990 that Treasury Board had approved the eight requests, subject to tender. The contracts in questions were not tendered, however, but awarded to the companies already doing the work. The Ministry contends that tendering the individual contracts was not practical, nor was it ever intended, because its RFP process was already underway. Treasury Board Staff and OIT state that they understood the individual contracts were being tendered, as indicated on the approval request form. We believe the onus was on the Ministry to ensure that the information given to Treasury Board Staff and OIT about the contracts for which pre-approval was being sought was accurate, and that the conditions of the subsequent pre-approval were consistent with the Ministry's actual intention. We also believe that, in view of the confusion over what was actually pre-approved by Treasury Board, a formal Treasury Board submission should be necessary after the RFP responses are evaluated and before the contracts are let.

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